

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant

and

**DEPARTMENT OF THE NAVY, MARINE
CORPS RESERVE SUPPORT COMMAND,
Kansas City, MO, Employer**

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**Docket No. 06-1630
Issued: October 12, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2006 appellant filed a timely appeal from the June 6, 2006 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration. Because more than one year elapsed between issuance of the Office's May 11, 2005 merit decision and the filing of this appeal, the Board lacks the jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 1, 2004 appellant, then a 53-year-old human resource assistant, filed an occupational disease claim alleging that on March 1, 2004 she became aware of the tingling in her hands, knots growing on both wrists and pain to the right shoulder, neck and arm. On July 1, 2004 she first realized that these conditions were caused by factors of her federal employment.

Appellant stated that she worked at the employing establishment for 21 years on a computer. Beginning in March 2004, she worked on a computer six hours a day.

By letter dated December 8, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. In a letter of the same date, it requested that the employing establishment submit information regarding the claim.

Appellant submitted a December 15, 2004 statement in which she described her work duties as a personnel clerk/human resource clerk and errands and recreational activities outside her federal employment. She described right and left shoulder injuries she sustained in July 1993 and March 1999 while performing part-time work for private maintenance and janitorial employers. In April 2002 appellant developed a lipoma tumor, the size of a grapefruit, on the back of her neck. Dr. Stanford¹ removed the tumor, which was diagnosed as noncancerous. Appellant indicated that she recovered from the surgery. She was not aware of any other diagnosed conditions related to her hands, arms or shoulders. Appellant stated that she was scheduled for a medical examination by Dr. Larry F. Frevert, a Board-certified orthopedic surgeon, on January 12, 2005. She submitted a certificate awarded to her work unit for achieving 1500 or more diary entries per month with 95 percent accuracy.

In a February 10, 2005 letter, Terry L. Ortega, an employing establishment human resource specialist, stated that she had not received a status update on whether appellant's claim had been accepted. Bettye Thomas, appellant's supervisor, told Ms. Ortega that she was aware that appellant had been performing data entry work on a part-time basis for several years for a private toy corporation. Ms. Ortega stated that appellant confirmed that she was a supervisor at this company and had been working there since 1999. Appellant stated that she did not include this information in her claim because she did not believe it caused or affected her claimed work-related condition.

Ms. Ortega submitted a description of appellant's human resource assistant position. She also submitted recommendations stemming from a July 6, 2004 safety and occupational health inspection of appellant's workstation. A medical appointment slip indicated that appellant was scheduled to be evaluated by Dr. Barry A. Rose, a Board-certified orthopedic surgeon, on November 12, 2004. In an undated statement, appellant described left shoulder and elbow injuries she sustained in February 2000 while working part-time for a private janitorial employer and the development of her claimed work-related condition.

By decision dated May 11, 2005, the Office found that appellant did not sustain an injury while in the performance of duty. The factual evidence established that she performed her work duties as alleged but the medical evidence was insufficient to establish a causal relationship between her alleged conditions and the employment activities.

In a letter dated April 25, 2006, appellant requested reconsideration. She stated that her appointment with Dr. Rose was cancelled on November 12, 2004 because his office would not accept government insurance or a workers' compensation case. Appellant noted that she was

¹ The Board notes that Dr. Stanford's professional qualifications are not contained in the case record.

experiencing pain to her neck and shoulders, and that she had scheduled an appointment with Dr. Frevert on May 11, 2006. She requested an extension to submit Dr. Frevert's report following his examination.

On June 6, 2006 the Office denied appellant's request for reconsideration. It found that it neither raised substantive legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant a merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

In a May 11, 2005 decision, the Office found that appellant did not sustain an injury while in the performance of duty. On April 25, 2006 appellant disagreed with this decision and requested reconsideration. Thus, the relevant underlying issue in this case is whether appellant sustained an injury causally related to factors of her federal employment.

Appellant did not submit any relevant or pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Her request merely noted that she was in the process of obtaining medical evidence. She did not submit any evidence or argument to the Office to support her request. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.⁵

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ See *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board